

## § 37.70

(e) If a miner refuses to participate in all phases of the examination prescribed in this subpart, no report need be made. If a miner refuses to participate in any phase of the examination prescribed in this subpart, all the forms shall be submitted with his or her name and social security account number on each. If any of the forms cannot be completed because of the miner's refusal, it shall be marked "Miner Refuses," and shall be submitted. No submission shall be made, however, without a completed miner identification document containing the miner's name, address, social security number and place of employment.

[43 FR 33715, Aug. 1, 1978, as amended at 77 FR 56735, Sept. 13, 2012; 79 FR 45119, Aug. 4, 2014]

### REVIEW AND AVAILABILITY OF RECORDS

#### § 37.70 Review of interpretations.

(a) Any miner who believes the classification for pneumoconiosis reported to him or her by MSHA is in error may file a written request with NIOSH that his or her radiograph be reevaluated. If the classification was based on agreement between an A Reader and a B Reader, NIOSH will obtain one or more additional classifications by B Readers as necessary to obtain agreement in accord with § 37.53, and MSHA must report the results to the miner together with notification from MSHA of any rights which may accrue to the miner in accordance with § 37.7. If the reported classification was based on agreement between two (or more) B Readers, the reading will be accepted as conclusive and the miner must be so informed by MSHA.

(b) Any operator who is directed by MSHA to transfer a miner to a less dusty atmosphere based on the most recent examination may file a written request with NIOSH to review its findings. The standards set forth in paragraph (a) of this section apply and the operator and miner will be notified by MSHA whether the miner is entitled to the option to transfer.

[77 FR 56735, Sept. 13, 2012, as amended at 79 FR 45119, Aug. 4, 2014]

## 42 CFR Ch. I (10–1–15 Edition)

#### § 37.80 Availability of records for radiographs.

(a) Medical information and radiographs on miners will be released by NIOSH only with the written consent from the miner, or if the miner is deceased, written consent from the miner's widow or widower, next of kin, or legal representative.

(b) To the extent authorized, radiographs will be made available for examination only at NIOSH.

[77 FR 56735, Sept. 13, 2012]

#### Subpart—Spirometry Examinations

SOURCE: 79 FR 45119, Aug. 4, 2014, unless otherwise noted.

#### § 37.90 Scope.

Under this subpart, coal mine operators are required to provide spirometry examinations to each current and new coal miner, using medical facilities approved by NIOSH in accordance with standards established in this subpart.

#### § 37.91 Definitions.

Definitions provided in § 37.2 will have the same meaning in this subpart. Any term defined in the Federal Mine Safety and Health Act of 1977 and not defined in § 37.2 or this section will have the meaning given it in the Act. As used in this subpart:

*ATS* means American Thoracic Society.

*ERS* means European Respiratory Society.

*Facility* means a facility or organization licensed to provide health care by the State or Territory in which services are provided, such as a hospital, a clinic, or other provider that performs spirometry examinations.

*FET* means forced expiratory time, which is the time from the beginning of exhalation (the back-extrapolated "time zero") to the end of the expiratory maneuver.

*FEV1* means forced expiratory volume in the first second, which is the volume of air that can forcibly be blown out in one second, after full inspiration.

*FEV6* means forced expiratory volume in the first six seconds, which is the volume of air that can forcibly be

blown out in six seconds, after full inspiration.

*FVC* means forced vital capacity, which is the volume of air that can forcibly be blown out after full inspiration.

*PEF* means peak expiratory flow, which is the maximal airflow during a forced expiratory maneuver.

*Spirometry examination* means a pulmonary function test that measures expiratory volume and airflow rates and may determine the presence and severity of lung function impairments, if such are present.

#### **§ 37.92 Spirometry examinations required for miners.**

(a) *Voluntary examinations.* Each operator must provide to all miners who are employed in or at any of its coal mines the opportunity to have a spirometry examination and a respiratory assessment at no cost to the miner at least once every 5 years in accordance with this subpart. The examinations will be available during a 6-month period that begins no less than 3.5 years and not more than 4.5 years from the end of the last 6-month period.

(b) *Mandatory examinations.* Every operator must provide to each miner who begins work in or at a coal mine for the first time on or after August 1, 2014, a spirometry examination and respiratory assessment at no cost to the miner in accordance with this subpart.

(1) *Initial spirometry examination.* An initial spirometry examination and respiratory assessment will be provided to all miners who begin work in or at a coal mine for the first time on or after August 1, 2014 within the first 30 days of their employment or within 30 days of approval of a plan to provide spirometry examinations.

(2) *Second examination.* A follow-up second spirometry examination and respiratory assessment will be provided to the miner no later than 3 years after the initial spirometry examination if the miner is still engaged in coal mining.

(3) *Third examination.* A third spirometry examination and respiratory assessment will be provided no later than 2 years after the examinations in paragraphs § 37.3(b)(2) and

paragraph (b)(2) of this section if the chest radiograph shows evidence of pneumoconiosis as defined in § 37.3(b)(3) or if the second spirometry test results demonstrate more than a 15 percent decline in the value of percent predicted FEV1 since the initial test. Percent predicted FEV1 will be calculated according to prediction equations published in *Spirometric Reference Values from a Sample of the General U.S. Population*, *American Journal of Respiratory and Critical Care Medicine*, 159(1):179–187, January 1999, (incorporated by reference, see § 37.97). A correction factor to Caucasian reference values will be applied when testing individuals of Asian descent as specified in the *ATS Technical Standards: Spirometry in the Occupational Setting*, p. 987 (incorporated by reference, see § 37.97).

(c) *Notification.* NIOSH will notify the miner when he or she is due to receive the second or third mandatory examination under (b) of this section. Similarly, NIOSH will notify the coal mine operator when the miner is to be given a second examination. The operator will be notified concerning a miner's third examination only with the miner's written consent, and the notice to the operator must not state the medical reason for the examination or that it is the third examination in the series. If the miner is notified by NIOSH that the third mandatory examination is due and the operator is not so notified, availability of the spirometry examination under the NIOSH-approved operator's plan will constitute the operator's compliance with the requirement to provide a third mandatory examination even if the miner does not take the examination.

(d) *Availability of spirometry testing.* The opportunity for spirometry to be available for purposes of this subpart must be indicated in an operator's plan that has been submitted and approved in accordance with this subpart.

#### **§ 37.93 Approval of spirometry facilities.**

(a) Facilities seeking approval to provide the spirometry examinations specified under this subpart must have the ability to provide spirometry of high technical quality. Thus, NIOSH-